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July 1, 2021

BY ECF

Honorable Sanket J. Bulsara
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Cruz v. Santana, et al.*, No. 20-CV-891 (EK) (SJB)

Dear Judge Bulsara:

We represent Defendant Henry Santana in the above-referenced *Bivens* and Federal Tort Claims Act action. We write respectfully in response to the government's letter dated June 25, 2021, requesting a stay of this action pending the outcome of a criminal investigation. (Dkt. no. 37, at 1). The government's letter presents plaintiff's position on the stay request but does not present Mr. Santana's position on the request.

Mr. Santana does not oppose a stay of the case to the extent it extends to matters other than his June 21, 2021 motion to dismiss in its entirety the Second Amended Complaint ("Complaint"). Mr. Santana served his motion on June 21, 2021, but pursuant to Rule III.C.2 of Judge Komitee's Individual Practices and Rules did not electronically file the motion, and it therefore does not appear on the docket.¹ In fact, Mr. Santana intends to file a letter motion in the near future seeking a stay of discovery pending resolution of his motion to dismiss, together with a request to adjourn the settlement conference scheduled for July 14, 2021, relief consistent with the relief requested by the government in its June 25 letter.

The government's reasons for seeking a stay of the case do not justify staying adjudication of Mr. Santana's motion to dismiss, which is pending before Judge Komitee. Adjudication of the motion does not affect the government's ability to respond to the FTCA claim or the parties' development of litigating positions. And adjudication of the motion does not itself hinder discovery, even though there is good cause to stay discovery as a discretionary matter in light of the motion, as Mr. Santana's stay motion will demonstrate.

¹ Rule III.C.2 states in relevant part: "Parties are encouraged not to file their motion papers and submit courtesy copies until the motion has been fully briefed, unless doing so might cause a party to miss an applicable deadline."

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Thank you for your consideration of this matter.

Respectfully,



Elizabeth Wolstein

Cc: (via ECF)
Gabriel P. Harvis, Esq.
Baree Fett, Esq.
Assistant U.S. Attorney Dara Olds, Esq.